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## WAC 173-27-160

No agency filings affecting this section since 2003

# Review criteria for conditional use permits.

The purpose of a conditional use permit is to provide a system within the master program which allows flexibility in the application of use regulations in a manner consistent with the policies of RCW 90.58.020. In authorizing a conditional use, special conditions may be attached to the permit by local government or the department to prevent undesirable effects of the proposed use and/or to assure consistency of the project with the act and the local master program.

(1) Uses which are classified or set forth in the applicable master program as conditional uses may be authorized provided that the applicant demonstrates all of the following:

- (a) That the proposed use is consistent with the policies of RCW 90.58.020 and the master program;
- (b) That the proposed use will not interfere with the normal public use of public shorelines;
- (c) That the proposed use of the site and design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program;
- (d) That the proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located; and
- (e) That the public interest suffers no substantial detrimental effect.

(2) In the granting of all conditional use permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if conditional use permits were granted for other developments in the area where similar circumstances exist, the total of the conditional uses shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.

(3) Other uses which are not classified or set forth in the applicable master program may be authorized as conditional uses provided the applicant can demonstrate consistency with the

requirements of this section and the requirements for conditional uses contained in the master program.

(4) Uses which are specifically prohibited by the master program may not be authorized pursuant to either subsection (1) or (2) of this section.

[Statutory Authority: RCW 90.58.140(3) and [90.58].200. WSR 96-20-075 (Order 95-17), § 173-27-160, filed 9/30/96, effective 10/31/96.]

- e. Implementation of any project or activity identified in the Final WRIA 8 Chinook Salmon Conservation Plan and related documents.

### **General Regulations**

#### **83.360     No Net Loss Standard and Mitigation Sequencing**

##### **1.     General**

- a. If specific standards, such as setbacks, pier dimensions and tree planting requirements, are provided in this chapter, then the City shall not require additional mitigation sequencing analysis under these provisions.
- b. In the following circumstances, the applicant shall provide an analysis of measures taken to mitigate environmental impacts:
  - 1) Where specific regulations for a proposed use or activity are not provided in this chapter;
  - 2) Where either a conditional use or variance application is proposed;
  - 3) Where the standards contained in this chapter require an analysis of the feasibility of or need for an action or require analysis to determine whether the design has been minimized in size; and
  - 4) Where the standards provide for alternative compliance or mitigation measures.
- c. Under Chapter 173-26 WAC, uses and shoreline modifications along Kirkland's shoreline shall be designed, located, sized, constructed and/or maintained to achieve no net loss of shoreline ecological functions.
- d. Maintenance activities shall be conducted in a manner that minimizes impacts to fish, wildlife, and their associated habitat and utilizes best management practices, unless specific standards in this chapter are already provided for maintenance activities.
- e. Where evaluating the feasibility of a proposed action, the City shall consider whether the cost of avoiding disturbance is substantially disproportionate as compared to the environmental impact of the proposed disturbance, including any continued impacts on functions and values over time.
- f. Where mitigation is required, the City shall consider alternative mitigation measures that are proposed by the applicant that may be less costly than those prescribed in this chapter; provided, that the alternatives are as effective in meeting the requirements of no net loss.
- g. Off-site mitigation located within the City's shoreline jurisdiction may be considered if all or part of the required mitigation cannot be provided on-site due to the location of existing improvements or other site constraints.
- h. Prior to issuance of a certificate of occupancy or final inspection, the applicant shall provide a final as-built plan of any completed improvements authorized or required under this subsection. A document must be recorded containing all required conditions of the mitigation, including maintenance and monitoring through the life of the development, unless otherwise approved by the City, in a form acceptable to the City Attorney and recorded with the King County Bureau of Elections and Records. If the mitigation is located off-site, then the property owner of the mitigation site shall sign the agreement, which shall run with the

- 6) As necessary to maintain or upgrade the structural safety of a legally established structure.
  - 7) For exploratory excavations under the direction of a professional engineer licensed in the state of Washington, as long as the extent of the land surface modification does not exceed the minimum necessary to obtain the desired information.
- b. Land surface modification outside of the shoreline setback is regulated as land surface modifications throughout the City. See KMC Title 29 for those regulations.

**83.340     Fill**

1. Fill shall be permitted only where it is demonstrated that the proposed action will not:
  - a. Result in significant damage to water quality, fish, aquatic habitat, and/or wildlife habitat; or
  - b. Adversely alter natural drainage and circulation patterns, currents, or stream flows, or significantly reduce floodwater-holding capabilities.
2. Fills landward and waterward of the OHWM shall be designed, constructed, and maintained to prevent, minimize, and control all material movement, erosion, and sedimentation from the affected area.
3. Fills waterward of the OHWM shall be permitted only:
  - a. In conjunction with an approved water-dependent use or public access use, including maintenance of beaches; or
  - b. As part of an approved mitigation or restoration project.
4. Any placement of materials landward of the OHWM shall comply with the provisions in KZC 83.330 for land surface modification.
5. No refuse disposal sites, solid waste disposal sites, or sanitary fills shall be permitted.

**83.350     Shoreline Habitat and Natural Systems Enhancement Projects**

1. Purpose – Shoreline habitat and natural systems enhancement projects include those activities proposed and conducted specifically for the purpose of establishing, restoring, or enhancing habitat for priority species in shorelines.
2. Covered Activities – The following actions are allowed under this section, provided they first meet the purpose stated in subsection (1) of this section:
  - a. Establishment or enhancement of native vegetation.
  - b. Removal of nonnative or invasive plants upland of the OHWM, including only those identified as noxious weeds on King County's published Noxious Weed List, unless otherwise authorized by the City.
  - c. Conversion of hard structural shoreline stabilization to soft shoreline stabilization, including associated clearing, dredging and filling necessary to implement the conversion, provided that the primary purpose of such actions is clearly restoration of the natural character and ecological functions of the shoreline.
  - d. Implementation of any project or activity identified in the City's Restoration Plan.

- 4) In all shoreline environments, the maximum height may be increased up to 35 feet if the City approves a Planned Unit Development under the provisions of Chapter 125 KZC.

83.200 Residential Uses

1. General – Residential uses shall not occur over water, including houseboats, live-aboards, or other single- or multifamily dwelling units.
2. Detached Dwelling Units in the Residential – L Shoreline Environment – Not more than one (1) dwelling unit shall be on each lot, regardless of the size of each lot, except an accessory dwelling unit.
3. Accessory Structures or Uses – Accessory uses and structures shall be located landward of the principal residence, unless the structure is or supports a water-dependent use. This provision does not apply if an improved public right-of-way or vehicular access easement separates the principal residence from the lake.

83.210 Commercial Uses

1. Float Plane Landing and Mooring Facilities
  - a. Use of piers or docks for commercial float plane service shall be allowed only in public or private marinas and shall be subject to a conditional use permit.
  - b. Any shoreline conditional use permit for float plane use shall specify:
    - 1) Taxiing patterns to be used by float planes that will minimize noise impacts on area residents and wildlife and minimize interference with navigation and moorage;
    - 2) Float plane facilities and services shall conform to all applicable City codes and Federal Aviation Administration standards and requirements for fuel, oil spills, safety and firefighting equipment, noise, and pedestrian and swimming area separation; and
    - 3) Hours of operation may be limited to minimize impacts on nearby residents.
2. Retail Establishment Providing New or Used Boat Sales or Rental – Outdoor boat parking and storage areas must be buffered as required for a parking area under the provisions of KZC 83.440.
3. Retail Establishment Providing Gas and Oil Sale for Boats
  - a. The location and design of fueling facilities must meet applicable state and federal regulations.
  - b. Storage of petroleum products shall not be located over water.
  - c. Storage tanks shall be located underground and shall comply with state and federal standards for underground storage tanks.
  - d. Fueling stations shall be located and designed to allow for ease of containment and spill cleanup.
  - e. New fueling facilities shall incorporate the use of automatic shutoffs on fuel lines and at hose nozzles to reduce fuel loss.